



# Economic Justice and Judicial Structure: Realizing Economic Growth in Nigeria

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## Research Note

### Abstract

*Economic justice is the expression of the effective distribution of economic goods. This could be realized through judicial mechanisms. Effective judicial systems are the platform on which economic justice can be actualized. There is a positive connection between economic justice and an effective judicial system, and this is usually measured by the rule of law and the level of its regard. The paper argued that one of the established dysfunctional characteristics of developing nations is the failure of their judicial system to deliver economic justice and the inability of the state to coordinate the integrity of its institutions. This paper employed a qualitative approach in its exploration of the issues. It engaged content analysis in the processing of the arguments it advanced. The paper argued that the resolution of economic justice and other institutional considerations could help in economic growth, especially in Nigeria. The paper concluded by suggesting that judicial structure must be strengthened in order to derive the capacity needed to realize economic justice in Nigeria.*

**Keywords:** Economic Justice, Judicial Structure, Income Inequality, Institutions, Nigeria

### 1. Introduction

Economic justice could be said to be the elements of fairness when good official decisions engage equitable allocation of advantages amongst actors within an economic system. Economic justice can be achieved when a country takes the demands of social and economic rights seriously (Business Dictionary, n.d.). The interplay between economic, social, and cultural rights and the achievement of economic justice provides a ground on which protecting the social structure of a society from income inequality and other forms of economically limiting factors become expedient and a good institutional practice. The extent of economic justice that is available within a state's institutional structure shows the commitment to the realization of social and economic rights. Social equity is, without doubt,

an alternative description of economic justice, since social equity connotes parity within a social system. The actualization of economic justice within state institutions is a right embedded in the social contract of individual persons. It is an obligation of the state towards the individual in preserving the individual essence and in justifying the essence of government and statehood.

Economic justice encompasses the functions of individual rights and the implementation of inclusive economic policies which cannot be dissociated from legal concerns. In the sense of it, economic justice, just as it is of economic interest, poses also very much as a legal concern. There are ways in which an economy could be affected by legal concerns. One of those ways is the extent to which the right to property is expressed and secured by the laws of the land (Greenspan, 2007).

Unfortunately, one of the adverse concerns of the judicial structure of developing African states is the inability to express and secure the rights to property. It is also common practice in bottom billion states for government officials to hide behind the law to extort multinational corporations or such transnational businesses that are domiciled in their country. (Meschi, 2009) As the judicial structure of bottom billion states have their powers absorbed by institutional decadence and compromised law enforcement mechanisms, economic justice becomes only a thing granted by force. Since force is only a thing that could be exerted by power, it becomes the exclusive right of the powerful. Hence the powerful, being anyone with access to authority, makes a tiny fraction of people that get economic justice.

The rest of the society having been failed by the ineffectuality of their judicial structure become marked by their powerlessness, and this is how the bottom billion states fail to even out economic justice and to resolve other institutional considerations necessary in the establishment of a vibrant and resilient economy. Stronger judicial systems are a marking of developed polities and vibrant economies (Dam, 2006).

Strong judicial structure can help with achieving economic justice in Nigeria, especially when strong judicial systems mean little or no executive interference. There are necessary set conditions for the making of strong judicial systems that the bottom billion states lack and these conditions are institutional considerations. In this first part of this paper, there would be a conceptual clarification of the subjects to be discussed. The second part of the paper examines the relationship between economic justice and judicial structure. The third part discusses how judicial structure can achieve economic growth through political will to strengthen institutions.

## **2. Literature Review**

### **2.1. Economic justice**

Economic justice can be attributed to the economic welfare of an individual as a unit in a larger society, it is the sum total of the ethical principles that inform the creation of economic institutions (Gustavson, 2016). Economic justice is the remedy in societies where income inequality is the deal. As Julie Gustavson observed, 'the ultimate purpose of economic justice is to free each person to engage creatively in the unlimited work beyond earning a living, that

of the mind and the spirit' (Gustavson, 2016). Economic justice is a product of sound institutions.

In many developed countries, there is a balance in the systemic workings of economic institutions, and it results in a situation where an individual benefits from the surplus of economic prosperity. In the United States, market capitalism is declared the *modus operandi* of the economic system, but economic justice is evidenced in a social security system and in anti-trust laws that attempt to curb the excesses of economic liberalism that can be manifested in a monopolistic control of economic sectors.

The test for the lack of economic justice is the extent of income inequality in any system. In Africa, income inequality is a roaring problem that is of a conflagrative status (UNDP, 2017). Income inequality is evident in many societies across Africa; as images of wealthy neighborhoods with stately houses and private security parallels shanty towns with hovels, and spaces congested with filth and violent crimes. The starker manifestation of income inequality is far more expressed in the difference between developed and developing nations, or the global south and the global north (John R. Barner, David Okech and Meghan A. Camp, 2014).

## 2.2. Judicial Structure

Judicial structure refers to the institution of courts and the whole judicial system. It refers to every functioning part of the judicial system. The judiciary is a political institution (Haynie, 2000). This is because it is part of a tripartite system of governmental organization in democracies that involves the legislative and the executive. It is the third layer of a check and balance system. Judicial structure goes beyond the judiciary. It incorporates the whole working parts of the judicial system which includes judicial administrative and enforcement mechanisms. In understanding the structural implications of a judicial system, it is necessary to consider 'structure' in a political context. Fred Riggs (1964) has explicated the concept of structure in a political context when he opined that:

*A structure is defined as any pattern of behavior which has become a standard feature of a social system. Thus, a government bureau is a 'structure,' or rather a whole set of structure consisting of the many things the officials in the bureau do regularly: the decisions they make, the people they see, the papers they sign. The structure is not composed of the people and things themselves, but of their actions. It does not include all their actions, but only those actions which relate to the goals and work of the bureau. The bureau also includes the relevant actions of 'outsiders' with whom it interacts on the normal course of business, its clientele, or 'audience'. They may be served or regulated by it; they may be the subjects as well as the objects of its activity. (Riggs, 1964)*

Judicial structure incorporate more than the tangible to include even things such as rules of interpretation as this goes very far in determining the aim of the courts. Theodore L. Becker has argued that judicial structure include the judicial decision-making process (Becker, 1967). He explored the argument even further that the judicial making process follows a pattern unique to itself, but he opined that judicial tests of impartiality can only be achieved through

empirical research (Becker, 1967). However, the test for judicial impartiality as an ethical concept in any judicial structure can be made by examining the reasoning behind judgments in line with the prevailing circumstances in the matter.

For instance, in 1962, Obafemi Awolowo, a Nigerian politician, was charged for treason. After about seven months of trial, Awolowo implored the trial judge to weigh the evidence of the witnesses per their political inclinations, since the case was political, and since there had been witnesses who came from an opposition party to testify against him. The trial judge, Sodeinde Sowemimo had declared in the judgment that he would have freed Awolowo, as he had been strained by the trial, but for the fact that he had sentenced the others who were charged with Awolowo, he did not want to be seen as being partial (Oduguwa, 2012).

In Nigeria, the impartiality of the court could be inferred from the ratio of a judgment. As judges usually give the juristic foundation for their judgment. Judicial structure have a role in the realization of economic justice, especially as corruption cases bear as much political coloration, as the Awolowo case. The organization of judicial structure reflects in part how much economic justice can be realized. This is because faulty judicial structure which are marked by lack of objectivity of the rule of law, fail to actualize their purpose which is to realize justice.

### **2.3. Economic Justice and Judicial Structure in Nigeria**

African states being marked by the features of a bottom billion nation have many challenges, most of all, economic challenges largely stemming from maintaining a monolithic economy founded on a resource bonanza or an economy that cannot respond to the needs of the globalized economy. It is not a complex truth, however, that the demand for economic justice gains more traction especially at a time when the growth curve of a country's economy is on the upward trend. This is because at such a time, the political demands on a government to provide social security for the economically vulnerable, and to make good policies that will sustain the growth are great. Usually, during a recession, a government has to protect the common people from individuals or corporations who might want to exploit the vulnerability of the system, by providing adequate regulatory covering to stem sharp economic practices so as to ensure the stability of the system. Economically contradictory policies that repress economic liberty and market flexibility are factors to consider in noting slow economic growth.

To assess how judicial transparency rankings and legal shortfalls underlying a complex web of government regulations and the incapacities of law enforcement affect the foreign direct investment portfolio of a country, it would be seen clearly, how legal considerations affect economic growth. The quality of judicial structure affects economic growth in certain ways, 'these are equity, the optimal allocation of resources, and the increase in total factor productivity (Marilene Lorizioa, Antonia Rosa Gurrieria, 2014).'

Economic justice can be realized by a sound judicial structure. How the demand for economic justice affects economic growth in Nigeria is to look at the consequences of its absence. In the Niger Delta Region where insurgency started and created a security issue, it started with a

discovery of the infrastructural development disparities between the deep southern region and the northern region of Nigeria.

What followed were requests for human development and a resolution of the observed disparities. It was thought that since the government funded the courts, the courts could not realize their demands, and hence they took to arms. The same as it is with economic justice, such is it with social justice since economic justice is an element of social justice. Social justice can only be granted by institutions with the right kind of power and influence. The reason why foreign direct investment would always be affected by the level of economic justice is that the higher the level of economic justice realized, the more the stability of the polity. And the stability of polity equals peace and security. In Nigeria, as in many other bottom billion states, there is a huge gap where economic justice is supposed to be a cohesive force in the social strata. It appears that judicial arrangement in the bottom billion states like Nigeria makes it possible for the lack of institutional transparency. Specific and identifiable patterns in the administrative organization of the courts, coupled with a tremendous degree of legal discretion and procedural complexities, allow judges and court personnel to extract additional illicit fees for services rendered (Buscaglia, 2001).

One of the reasons that economic justice cannot result from the administration of the law in Nigeria is the most cumbersome character of legal and administrative procedures. Just as much as one could make the analogy of huge, slow, obsolete machines performing simple tasks to lighter, faster ones, one could refer to the structure of the Nigerian legal and administrative system as a huge, slow-moving under-performing machine, needing to shed many of its complexities and ambiguous forms under which many take refuge to manipulate processes. It may be argued that the failure of the Nigerian justice system in the realization of economic justice has resulted in certain anomalies such as extra-judicial killings and several cases of abuse against persons, hence the breach of investor confidence in the political environment that is vital for economic growth.

One core juristic virtue that can be found in sound judicial structure is the rule of law and its objectivity in the institutional processes of the courts as mechanisms of justice. To investigate if Nigerian courts are mechanisms of economic justice, it would be appropriate to examine the posturing of the courts in the adjudication of cases relating to unjust enrichment. Many Nigerian government officials misappropriate public funds (Adewale, 2007). Within the country, there is a vast divide in the condition of the poor in Nigeria and the wealthy. Wealthy politicians in the country who have much influence and the money to buy justice live extravagantly at the expense of the poor masses. There is a plenitude of anti-corruption legislations; however, the prosecution and adjudication have always fallen short of expectations (Babatunde & Filani, 2017).

Basil Ugochukwu has argued that the issue of legitimacy in judicial institutions could be even further emphasized by the constant engagement of the courts in the resolution of political cases. He further argued that in countries where there is a high legitimacy ascribed by the people to the judiciary, there are lesser issues of corruption (Ugochukwu, 2011). Looking at the issues of legitimacy in the perception of institutions, people ascribe legitimacy to judicial

institutions as a consequence of the capacity of the courts to achieve economic justice in the way they objectively adjudicate on corruption matters. It is the case that in such judicial systems there is little tolerance for corruption and the people know that. The transparency of the courts in such systems where there is a high public legitimacy ascribed to judicial institutions should demonstrably be high.

According to Basil Ugochukwu, the 'judicialization of politics' could be one of the major reasons why the Nigerian judiciary is corrupt (Ugochukwu, 2011). He suggested that not exposing excessively the judiciary to the business of politics could be one of the ways to resolve the issue of a corrupt judiciary (Ugochukwu, 2011). The interaction of executive politics and the judiciary in Nigeria is almost absolute at the point where it is a tradition now that electoral victory must be validated by judicial means.

The thriving character of corruption within the Nigerian institutional framework is exacerbated by the lack of the rule of law that would have evened out on the blocks of interfering influences on the terrain of judicial administration. The blocks of interfering influences on the terrain of judicial administration is linked to the fact that the Nigerian Judiciary is largely dependent on the executive in the carrying out of its functions. In fact, there is a constitutional role that has been spelled out in the provisions of Section 17(2) (e) that the impartiality, independence, easy accessibility, and integrity, necessary for unimpaired judicial function shall be secured and maintained (The Constitution of the Federal Republic of Nigeria, Section 17, 1999). Section 121(3) further provides for clarification that '...any amount standing to the credit of the judiciary in the consolidated fund of the state shall be paid directly to the heads of the court concerned (The Constitution of the Federal Republic of Nigeria, Section 121, 1999).

As against all expectations imposed by the constitution, the Nigerian judicial system fails in its mandate to ensure economic justice due to corruption and the flagrant disregard and contempt for the rule of law. In Nigeria where there is so much constraint on judicial functions, the constitution in envisioning a progressive judiciary recommended an independent judiciary, but the judiciary will hardly be independent if the executive has control over its funds. In examining how executive constraints affect economic growth, it was noted that low levels of Gross Domestic Product loss were more in countries with high executive constraints, and high levels of Gross Domestic Product loss were more in countries with low executive restraints and it was also noted that the extent of executive restraint is determined by the level of judicial and legislative efficiency ( Besley & Collier, 2016).

The relationship between judicial efficiency and economic function can be interpreted in the context of political control, in as much as political control is left unrestrained, it affects institutional function and when the institutional function is affected, economic growth can be affected. To reinforce the position that economic justice as a public good can only be achieved by strong institutions and efficient judicial system is to look at how many bottom billion states have realized economic justice as one of the public goods for their citizenry. The bottom billion states can't realize economic justice because of compromised judiciaries and weak institutions. Within the Nigerian network of institutions, the judicial structure is ineffective in

delivering economic justice and that in itself affects investor confidence, and in extension, economic growth. One would wonder how economic justice is supposed to be delivered by courts when they are not willing to make any significant changes to their mode of operation. Maintaining institutional probity while adjudicating matters, more especially where there are varying political and financial interests, can help in getting economic justice.

### **3. Judicial Structure and Economic Growth in Nigeria**

Economic freedom is required as a determinant for economic growth (Ajide, 2014). Two of the five components that make up economic freedom as stated by the Fraser Institute are the security of property rights and the legal structure (Fraser Institute, 2019). Economic growth relies not just on economic variables, but on the strength of institutions (Marilene Lorizioa, Antonia Rosa Gurrieria, 2014). There is a positive relationship between judicial structure and economic growth that places an emphasis on the role of judicial structure in the growth of economies (Lorizioa & Gurrieria, 2014).

Scully (1988) argued that states with sound institutions in terms of their 'stability' and their 'per capita measurement' advance at a quicker rate than those with weak institutions (Scully, 1988). This is true when in many developing states, institutions do not have any set pattern of operations but are inclined to the whims of people who have enough influence to determine how they operate. In developing states, corruption is an issue when the integrity of institutions are to be considered. From processes that were rigged to lack of transparency in judicial institutions, developing countries have institutional issues that are influenced by big politics.

In the Nigerian case, judicial corruption for instance in Nigeria has many times been a concern in the public discourse and has led to a high level of distrust in the country's justice system. Judicial structure has a role to play in the moderation of the interaction of economic forces. This role is even more emphasized as good judicial structure bolster trust in a contractual system. Contractual disputes are efficiently resolved and this is good for economic growth (Arner, 2007). In countries where corruption is very high and where politicians misappropriate public funds, there is a huge impact on society. In such circumstances, some of such money goes around in the attempt to prevent the investigation and the prosecution for the misappropriation. The judicial structure becomes complicit in that ever-widening network of corruption and judicial officers become accomplices in the crime of public sector larceny. At that point, it becomes very difficult to get any objectivity from a judiciary flush with bribes and inordinate gifts.

The picture of the public official in Nigeria who is insanely rich evokes little or no ethical repulsion in high places, however, the masses' ethical appreciation of the situation is inspired majorly because the masses are the recipients of the consequences of bleeding public coffers. Corruption is a major cause of GDP loss, and this is evidenced in its limitation of private investment and how it affects government expenditure (Mauro, 1995). One of the damaging factors for any judicial structure is the prevailing of the executive arm of government on judicial function. As a consequence, corruption would erode the judicial structure and limit

objectivity. The power of the judiciary in Nigeria is hinged on the legal realism of emphasis on case law. The Supreme Court's judicial precedents have a very powerful effect in its influence on the judgments of lower courts, and what this means, is that the Supreme Court is powerful enough to revolutionize the judicial structure in Nigeria, however, it chooses to follow and age-long mechanistic tradition of interpretation which does not allow for teleological reasoning that could achieve the economic justice that is much needed in the Nigerian social strata.

The Nigerian judicial structure should be primed towards achieving economic justice by leveraging on the power of the tradition of legal realism. This is because legal realism is the vehicle through which judicial reforms could be arrived at. The focal point of the arguments that has been proffered is to the effect that in considering any set template for economic growth, the strength and the integrity of judicial structure must be ascertained. And it is most necessary that efficient judgment enforcement mechanisms are in place. In the analysis of the structural integrity of the Nigerian judicial structure, it was noted that corruption is a factor in the loss of public trust in Nigeria's judicial structure; another factor is the selection process of judges that encourages nepotistic judicial appointments.

Even in the consideration of the arms of government, the judiciary happens to be the weakest since funding may determine the level of efficiency that institutions have in Nigeria. The Nigerian judiciary happened to be the least funded of the three arms of government, notwithstanding, its highly important role in the support of democracy. It has to guide legislations to become proper law. Matthew Stephenson in analyzing resource constraints for judicial reformers wrote:

*If, for example, a well-functioning judicial system is a necessary precondition for large-scale economic activity, then it might make sense to devote substantial resources upfront to improving the court system. If, on the other hand, a great deal of economic progress and social welfare can be generated with a more modest court system, then it may make sense to devote relatively fewer government resources to the court system early on, targeting these resources instead at other things—such as health care, basic education, and infrastructure—thought to be more important for priming the pump of economic growth. Of course, the productivity of these other sorts of reforms may depend on a well-functioning system for regulating service delivery and resolving disputes, which may require a reasonably effective judicial system (Stephenson, 2007).*

The question of resource constraint for the judiciary has not always been a matter of inadequate resources but of misappropriation, hence the problem. Again the issue of efficiency could be tied to the technological needs of the judicial system. With the significant technological dimension commerce is taking in the private sector, the judicial system should not be left out. In the consideration of investment opportunities, the rule of law as a part of a legal structure is very pertinent. In his work, Barry Weingast concluded that:

*The approach to the rule of law – creating certainty and equality of the law with an absence of arbitrary abuse – requires not only the supremacy of the law as traditional arguments emphasize but a dynamic component by which the law holds not only today but also in the*



*future. This involves the concept of perpetuity. To sustain the rule of law over time, the state must become perpetually lived; that is, state institutions must live beyond those who create them so that the identities of political officials do not matter (Weingast, 2008).*

On the question of the rule of law and the viability of the rule of law as a product of efficient judicial structure, Nigeria is caught in the meta-narrative of a faulty history whereby the constant interference in the legal process has halted the development of the rule of law. The period of the military regime where individuals would suspend the constitution had implications for the development of the rule of law. The perception of the law could no longer be dissociated from individual concerns where instead it should have been for institutional concerns. As far as institutional analyses might go, the legal prescriptions for economic growth are necessary for the framework of a public service delivery system for positive institutional perception and for the proof of the structural integrity test that is very much needed for economic growth.

#### **4. Conclusion**

Economic justice is not entirely a good that can be accessed by the poor in Nigeria and elsewhere in the developing world. It can be accessed if there is a determination on the part of the government to tackle the issue of growing income inequality. What would be required is institutional willingness. But when the institutions are weak, there would be no institutional willingness to deliver economic justice. Institutions can be strengthened if there is a disruption to the present arrangement of structural vices within the organization of state institutions, such as, cronyism and nepotism. For economic growth and the sustenance of the growth pace, there must be dedicated and effectively functioning institutions, and especially judicial structure.

The usual deliberate slips within the judicial system could hamper the delivery of economic justice in favor of individuals who can buy justice and negotiate the integrity of the judicial system. This could also forge deep mistrust of the state's institutions by foreign investors who consider these critically. Therefore the way forward for economic growth in Nigeria would be that the country takes positive steps towards the attainment of economic justice within its legal institutions and in the making of its policies.

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